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NOTICE OF ALLOWANCE AND FEE(S) DUE

757

7590

11/05/2008

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

CORDRAY, DENNIS R

ART UNIT

PAPER NUMBER

1791

DATE MAILED: 11/05/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,577	09/30/2003	August Joseph Borschke	11867/23	9964

TITLE OF INVENTION: SMOKABLE ROD FOR A CIGARETTE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	02/05/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

757 7590 11/05/2008

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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10/675,577	09/30/2003	August Joseph Borschke	11867/23	9964

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nonprovisional	NO	\$1510	\$300	\$0	\$1810	02/05/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
CORDRAY, DENNIS R	1791	I31-360000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
☐ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____
Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			CORDRAY, DENNIS R	
			ART UNIT	PAPER NUMBER

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DATE MAILED: 11/05/2008

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 321 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 321 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability

Application No.

10/675,577

Examiner

DENNIS CORDRAY

Applicant(s)

BORSCHKE ET AL.

Art Unit

1791

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication dated 7/10/2008 and the telephonic communication dated 10/16/2008.
2. ☒ The allowed claim(s) is/are 1-49,94-97 and 100-103.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 4/9/04, 7/14/08
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date ____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/Dennis Cordray/
Examiner, Art Unit 1791

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Marc Richards on 10/16/2008.

The application has been amended as follows:

SPECIFICATION:

The Abstract has been replaced with the following Abstract:

A smokable rod for a smoking article, such as a cigarette, possesses a co-axial or concentric construction. A longitudinally extending inner core of tobacco cut filler is positioned within a smokable rod. The outer material that circumscribes the inner core in an annular fashion is composed of a tobacco material treated with a burn suppressing agent, and the outer material acts as a substrate for an aerosol forming material. In use, one end of the smokable rod is lit, and the tobacco cut filler of the inner core burns to yield tobacco smoke. The outer material smolders, and hence thermal decomposition products of the outer tobacco material and volatilized aerosol forming material are produced. When the opposite end of the smokable rod is drawn upon, an aerosol composed of tobacco smoke, thermal decomposition products of tobacco, and volatilized aerosol forming material, is provided.

CLAIMS:

In Claim 1, line 5, the words " and no appreciable amount of aerosol forming material" have been deleted.

In Claim 1, line 10, the comma at the end of the line has been deleted and the punctuation --;-- inserted therefor.

In Claim 1, line 13, the period at the end of the line has been deleted and the punctuation --;-- inserted therefor.

In the last line of Claim 1, after the word "portion" and before the period, the words --; and wherein the core portion has a first packing density between 100 mg/cm³ and 350 mg/cm³, the outer portion has a second packing density between 350 mg/cm³ and 650 mg/cm³, and the second packing density is greater than the first packing density-- have been inserted.

In Claim 12, line 1, the word " smokable" has been deleted.

In Claim 13, line 1, the word " smokable " has been deleted.

In Claim 15, line 1, the word " smokable " has been deleted.

In Claim 27, lines 5 and 6, the words " and no appreciable amount of aerosol forming material" have been deleted.

In the last line of Claim 27, after the word "burning" and before the period, the words --; and wherein the core portion has a first packing density between 100 mg/cm³ and 350 mg/cm³, the outer portion has a second packing density between 350

mg/cm³ and 650 mg/cm³, and the second packing density is greater than the first packing density--

have been inserted.

In Claim 38, line 1, the word "smokable" has been deleted.

In Claim 39, line 1, the word "smokable" has been deleted.

In Claim 40, line 1, the word "smokable" has been deleted.

Claims 92 and 93 have been cancelled.

In Claim 94, between the words "no" and "aerosol", the words -- appreciable amount of-- have been inserted.

In Claim 95, the characters ", 93" have been deleted.

In Claim 96, the characters ", 93" have been deleted.

In Claim 97, the characters ", 93" have been deleted.

Claims 98 and 99 have been cancelled.

In Claim 100, between the words "no" and "aerosol", the words -- appreciable amount of-- have been inserted.

In Claim 101, the characters ", 99" have been deleted.

In Claim 102, the characters ", 99" have been deleted.

In Claim 103, the characters ", 99" have been deleted.

The following is an examiner's statement of reasons for allowance: the nearest prior art, Luke et al, discloses a coaxial type of smoking article comprising an core rod of tobacco, a wrapper for the core, an outer portion comprising tobacco and an outer

wrapper, but fails to disclose the claimed packing density for either the core or the outer portion. Other prior art, Muller et al (6257243) discloses a similar coaxial type of smoking article wherein the inner core has a packing density of 200 mg/cm^3 to 320 mg/cm^3 and the outer portion has a packing density of 80 mg/cm^3 to 180 mg/cm^3 , and teaches that having an outer portion with a lower packing density than the inner rod the reduces the formation of potential sidestream smoke (col 3, lines 5-10 and 50-56). Still other prior art, Schneider et al (5379789, col 2, lines 35-68, col 3, lines 50-66; and 4986287, col 1, line 54 to col 2, line 14), discloses coaxial type of smoking articles having an outer portion with a lower packing density than the inner rod that provide a low nicotine free dry condensate without sacrificing satisfactory smoke per puff, less CO yield per puff and a reduced secondary smoke stream between puffs. Due to the advantages disclosed in the cited prior art, using the claimed packing densities would not have been obvious to one of ordinary skill in the art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DENNIS CORDRAY whose telephone number is (571)272-8244. The examiner can normally be reached on M - F, 7:30 -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Cordray/
Examiner, Art Unit 1791

/Eric Hug/
Primary Examiner, Art Unit 1791